



Order Filed on August 30, 2023
by Clerk
U.S. Bankruptcy Court
District of New Jersey

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY**

Caption in Compliance with D.N.J. LBR 9004-2(c)

GENOVA BURNS, LLC

110 Allen Road, Suite 304

Basking Ridge, New Jersey 07920

Tele: (973) 467-2700

Counsel for Gerald Metals Sarl, Creditor

DANIEL M. STOLZ, ESQ.

SCOTT S. REVER, ESQ.

GARY N. MARKS, ESQ.

LOWENSTEIN SANDLER

One Lowenstein Drive

Roseland, New Jersey 07068

Tele: (973) 597-2500

Counsel for Debtor

ANDREW BEHLMANN, ESQ.

COLLEEN M. RESTEL, ESQ.

In Re:

MLS BERKOWITZ INVESTMENTS, LLC,

Alleged Debtor.

Case No.: 23-15334 CMG

Chapter: 7

Judge: Christine M. Gravelle

**STIPULATED ORDER (I) APPROVING STIPULATION BY AND
BETWEEN MLS BERKOWITZ INVESTMENTS, LLC AND GERALD
METALS SARL AND (II) CONVERTING INVOLUNTARY
CHAPTER 7 CASE TO CHAPTER 11**

The relief set forth on the following pages, numbered two (2) through six (6), is hereby

ORDERED.

DATED: August 30, 2023

A handwritten signature in black ink, reading "Christine M. Gravelle", is written over a horizontal line.

Honorable Christine M. Gravelle
United States Bankruptcy Judge

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Alleged Debtor: MLS Berkowitz Investments, LLC
Case No.: 23-15334 (CMG)
Caption of Order: *Order (I) Approving Stipulation by and between MLS Berkowitz, LLC and Gerald Metals Sarl and (II) Converting Involuntary Chapter 7 Case to Chapter 11*

WHEREAS, on June 20, 2023 (the “Involuntary Petition Date”), Gerald Metals Sarl (“Gerald”) filed an involuntary petition (the “Involuntary Case”) for relief under chapter 7 of title 11 of the United States Code (the “Bankruptcy Code”) against MLS Berkowitz Investments, LLC (“MLS” and together with Gerald, the “Parties”).

WHEREAS, on June 28, 2023, Gerald filed the *Motion for Entry of an Order Appointing Interim Trustee Pursuant to 11 U.S.C. § 303(g) and F.R.B.P. 2001(a)* [Dkt. 5] (the “Interim Trustee Motion”), and on July 27, 2023, MLS filed an objection to the Interim Trustee Motion [Dkt. 17].

WHEREAS, on July 17, 2023, MLS filed the *Motion of MLS Berkowitz Investments LLC for Entry of an Order Dismissing Involuntary Chapter 7 Petition and Awarding Fees, Costs, and Damages* [Dkt. 11] (the “Motion to Dismiss”), and on July 28, 2023, Gerald filed an objection to the Motion to Dismiss [Dkt. 19].

WHEREAS, MLS represents that Gerald is the only non-affiliated creditor of its estate.

WHEREAS, the Parties have agreed to resolve the disputes expressed in the Interim Trustee Motion and the Motion to Dismiss, as well as other disputed matters pursuant to this stipulation (this “Stipulated Order”) and the *MLS Berkowitz Investments, LLC Memorandum of Understanding* (the “Memorandum of Understanding”) attached hereto as **Exhibit A**.

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Alleged Debtor: MLS Berkowitz Investments, LLC
Case No.: 23-15334 (CMG)
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WHEREAS, the Bankruptcy Court held a hearing on August 3, 2023, wherein the Parties represented to the Bankruptcy Court that they have reached a settlement in principle and requested an adjournment of all pending deadlines in the Involuntary Case, which the Bankruptcy Court granted on the record.

NOW, GERALD AND MLS HEREBY STIPULATE AND AGREE AND, UPON APPROVAL BY THE BANKRUPTCY COURT, IT IS ORDERED, ADJUDGED, AND DECREED, AS FOLLOWS:

1. The Memorandum of Understanding attached hereto as **Exhibit A** is hereby incorporated into this Stipulated Order as if set forth in full herein. To the extent any inconsistency exists between this Stipulated Order and the Memorandum of Understanding, the Memorandum of Understanding controls.

2. The Interim Trustee Motion shall be deemed withdrawn as of the date this Stipulated Order becomes a final order.

3. The Involuntary Case is hereby converted to a voluntary case under chapter 11 of the Bankruptcy Code (the "**Chapter 11 Case**").

4. The order for relief in the Chapter 11 Case is hereby entered, effective as of the Involuntary Petition Date.

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Alleged Debtor: MLS Berkowitz Investments, LLC
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5. Upon this Stipulated Order becoming a final order, the Motion to Dismiss shall be deemed withdrawn as moot.

6. The Clerk of the Bankruptcy Court is hereby authorized and directed to permanently seal (i) all pleadings related to the Interim Trustee Motion, (ii) all pleadings related to the Motion to Dismiss, and (iii) the Memorandum of Understanding attached hereto as **Exhibit A**.

7. The Parties have filed a joint plan [Dkt. 23] (the “Plan”), incorporating the terms of this Stipulated Order and the Memorandum of Understanding.

8. A hearing on confirmation of the Plan is scheduled for September 5, 2023 at 3:00 P.M. Parties may appear and object to confirmation of the Plan at the hearing.

9. Gerald has an allowed general unsecured claim against MLS in the amount of \$60,000,000 (the “Gerald Claim”). For the avoidance of doubt, Gerald is not obligated to file a Proof of Claim in connection with the Gerald Claim.

10. Subject to Court approval of this Stipulated Order, Gerald stipulates and agrees, and the Court finds and determines, that:

- a. the Plan and the documents Gerald has received through due diligence and discovery constitute a written disclosure statement containing adequate information, satisfying section 1125 of the Bankruptcy Code; and

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b. Gerald has accepted the Plan pursuant to section 1126(a) of the Bankruptcy Code.

11. MLS shall relinquish to Gerald all right, title, and interest in and to (i) that certain Bond held by Rafeak and Moore in the approximate undrawn amount of \$150,000.00 USD and (ii) four (4) containers of tin concentrate located in Guyana. The automatic stay is hereby modified to the extent necessary to permit Gerald to cause such containers to be exported. Neither MLS nor Seth Berkowitz shall have any further obligations or liabilities with respect thereto.

12. Lowenstein Sandler LLP (“Lowenstein”) shall have an allowed administrative expense claim in the amount of \$100,000 for professional fees incurred in connection with the Involuntary Case and the Chapter 11 Case (the “Lowenstein Claim”), without prejudice to the rights of Lowenstein to be paid in full for the amount of its legal fees, expenses, and costs from sources other than the Debtor’s estate. The Lowenstein Claim shall be paid solely from the first proceeds of, and at the closing of, the sale of the Longwood Interest (defined below).

13. The Parties shall select a mutually agreeable real estate appraiser to conduct an appraisal of MLS’s membership interest in Longwood Industrial, LLC (the “Longwood Interest”), and the wind down trustee appointed pursuant to the Plan shall endeavor to sell such membership interest in a commercially reasonable manner as soon as practicable. The Parties agree that a sale

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of the Longwood Interest at a gross price within 5% of its appraised value is commercially reasonable, including a private sale to Gerald or its affiliate for such amount.

14. The first \$100,000 of net proceeds from the sale of the Longwood Interest shall be used to pay the Lowenstein Claim. Nothing herein or in the Plan will preclude any other person or entity, other than MLS's bankruptcy estate or Gerald, from paying the balance of the MLS's legal fees, if any.

15. This Court shall retain exclusive jurisdiction to enforce the terms of this Stipulated Order.

ACCEPTED AND AGREED TO:

Dated: August 21, 2023

LOWENSTEIN SANDLER LLP

By: /s/ Andrew Behlmann

Andrew Behlmann, Esq.
Colleen M. Restel, Esq.
One Lowenstein Drive
Roseland, New Jersey 07068
Tel: (973) 597-2500
Email: abehlmann@lowenstein.com
crestel@lowenstein.com

Counsel to MLS Berkowitz Investments, LLC

GENOVA BURNS, LLC

By: /s/ Daniel M. Stolz

Daniel M. Stolz, Esq.
Scott S. Rever, Esq.
Gary N. Mark, Esq.
110 Allen Road, Suite 304
Basking Ridge, New Jersey 07920
Tel: (973) 467-2700
Email: dstolz@genovaburns.com
srever@genoverburns.com
gmarks@genovaburns.com

Counsel to Gerald Metals Sarl

In re:
MLS Berkowitz Investments LLC
Debtor

Case No. 23-15334-CMG
Chapter 7

CERTIFICATE OF NOTICE

District/off: 0312-3
Date Rcvd: Aug 30, 2023

User: admin
Form ID: pdf903

Page 1 of 1
Total Noticed: 1

The following symbols are used throughout this certificate:

Symbol	Definition
+	Addresses marked '+' were corrected by inserting the ZIP, adding the last four digits to complete the zip +4, or replacing an incorrect ZIP. USPS regulations require that automation-compatible mail display the correct ZIP.

Notice by first class mail was sent to the following persons/entities by the Bankruptcy Noticing Center on Sep 01, 2023:

Recip ID	Recipient Name and Address
db	+ MLS Berkowitz Investments LLC, 17 Country Club Lane, Marlboro, NJ 07746-1447

TOTAL: 1

Notice by electronic transmission was sent to the following persons/entities by the Bankruptcy Noticing Center.
Electronic transmission includes sending notices via email (Email/text and Email/PDF), and electronic data interchange (EDI).

NONE

BYPASSED RECIPIENTS

The following addresses were not sent this bankruptcy notice due to an undeliverable address, *duplicate of an address listed above, *P duplicate of a preferred address, or ## out of date forwarding orders with USPS.

NONE

NOTICE CERTIFICATION

I, Gustava Winters, declare under the penalty of perjury that I have sent the attached document to the above listed entities in the manner shown, and prepared the Certificate of Notice and that it is true and correct to the best of my information and belief.

Meeting of Creditor Notices only (Official Form 309): Pursuant to Fed .R. Bank. P.2002(a)(1), a notice containing the complete Social Security Number (SSN) of the debtor(s) was furnished to all parties listed. This official court copy contains the redacted SSN as required by the bankruptcy rules and the Judiciary's privacy policies.

Date: Sep 01, 2023

Signature: /s/Gustava Winters

CM/ECF NOTICE OF ELECTRONIC FILING

The following persons/entities were sent notice through the court's CM/ECF electronic mail (Email) system on August 30, 2023 at the address(es) listed below:

Name	Email Address
Andrew Behlmann	on behalf of Debtor MLS Berkowitz Investments LLC abehlmann@lowenstein.com
Colleen Restel	on behalf of Debtor MLS Berkowitz Investments LLC crestel@lowenstein.com
Daniel Stolz	on behalf of Petitioning Creditor Gerald Metals Sarl dstolz@genovaburns.com dstolz@ecf.inforuptcy.com;msousa@genovaburns.com
U.S. Trustee	USTPRegion03.NE.ECF@usdoj.gov

TOTAL: 4